

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF AGRICULTURE

In the Matter of the Claim  
of Robert Hilgert Against  
the Grain Buyer's Bond of  
Oliver Freidrichs, d/b/a  
Freidrichs Grain; Auto Owners  
Insurance Company, as Surety.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck, on June 13, 1985 at 2:00 P.M., in Conference Room A of the Department of Agriculture, 90 West Plato Boulevard, in the City of St. Paul, Minnesota.

John H. Schnobrich, Attorney at Law, of the firm of Estebo, Schnobrich Frank, Ltd., 315 South Washington Street, P.O. Box 377, Redwood Falls, Minnesota 56283, appeared on behalf of the Claimant, Robert Hilgert. James A.

Reding, Attorney at Law and Richard S. Stempel, Attorney at Law, of the firm of Reding and Votel, 814 Degree of Honor Building, St. Paul, Minnesota 55101, appeared on behalf of Auto Owners Insurance Company. Jon K. Murphy, Special

Assistant Attorney General, 90 West Plato Boulevard, St. Paul, Minnesota 55107, appeared as an observer for the Minnesota Department of Agriculture.

The record in this matter closed on July 22, 1985 which was the date of receipt of the last written memorandum filed by the parties.

This Report is a recommendation, not a final decision. The Commissioner of Agriculture will make the final decision after a review of the record which

may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final

decision of the Commissioner shall not be made until this Report has been made

available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Jim Nichols, Commissioner, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107 to ascertain the procedure for

filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not the Claimant, Robert Hilgert, is entitled to recover against the Grain Buyer's Bond written by Auto Owners Insurance Company for Oliver Freidrichs, d/b/a Freidrichs Grain.



Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. Robert G. Hilgert is a farmer who owns a farmstead near Bird Island, Minnesota. Mr. Hilgert grows corn.

2. Oliver Freidrichs, d/b/a Freidrichs Grain, was in the business of buying grain until 1983. Mr. Freidrichs resided in Gibbon, Minnesota. He was licensed by the Department of Agriculture as an itinerant grain buyer (Ex. B). Mr. Freidrichs held, as principal, a Grain Buyer's Bond from July 1, 1981 through the end of June of 1982 in the amount of \$10,000 and from July 1, 1982 through June 30, 1983, in the amount of \$50,000. (Ex. A, Ex. B). The bonds were statutory bonds issued pursuant to Minn. Stat. 232.13. The surety for the bond was Auto Owners Insurance Company.

3. In August of 1981, Mr. Hilgert called Mr. Freidrichs to discuss moving some corn from his farm because his bins were full. He had done business with Mr. Freidrichs before. Mr. Freidrichs advised Mr. Hilgert that Archer Daniels Midland (ADM) had a program whereby it would store grain for farmers at its Twin Cities facility without charge until the first of the year. After January 1 the farmer would then pay usual commercial rates for storage. Mr. Hilgert agreed to participate in this program.

4. Between August 18 and August 21 of 1981, Mr. Freidrichs removed 12,044.66 bushels of corn from the Hilgert farm which he transported to the Twin Cities to be stored at an ADM facility. Mr. Hilgert intended to wait to sell the corn since the market was depressed in August of 1981. Mr. Hilgert did not intend to give title to the corn to Mr. Freidrichs. Mr. Freidrichs and Mr. Hilgert agreed that the corn would be sold when Mr. Hilgert called Mr. Freidrichs and told him to do so. Hilgert received bills of lading, grain inspection certificates, and warehouse scale tickets for the corn from Freidrichs in August of 1981. (Ex. 5).

5. In the spring of 1982 Mr. Freidrichs sold Mr. Hilgert's corn. He was not authorized by Mr. Hilgert to do so and he did not tell Hilgert that he had

sold the corn nor did he forward to Mr. Hilgert the money he received from the sale. Mr. Freidrichs hoped that when Mr. Hilgert finally called him to sell his corn that he (Freidrichs) would have sufficient corn of his own on hand so that he could sell it and pay Mr. Hilgert.

6. On February 3, 1983 Mr. Hilgert called Mr. Freidrichs and told him that he wanted to sell the corn which ADM had stored. Mr. Freidrichs told Mr. Hilgert that he would sell the corn at the prevailing price that day and then send him the proceeds less charges for storage and transfer. Mr. Freidrichs did not advise Mr. Hilgert that he had sold the corn in 1982. Mr. Freidrichs then proceeded to draw up warehouse scale tickets showing that the corn had been sold on February 3, 1983 and sent them to Mr. Hilgert. (Ex. 4).

7. Mr. Hilgert had expected that he would receive a check from Mr. Freidrichs approximately 10 days after he had called him to sell the corn. Approximately 2 weeks after February 3, Mr. Hilgert called Mr. Freidrichs and asked him why he hadn't received a check. Mr. Freidrichs told Mr. Hilgert that he had no money and couldn't pay Mr. Hilgert at that time. A few days

after this conversation Mr. Freidrichs' bank called his loans . Mr. Freidrichs then filed a petition in bankruptcy on February 16 , 1983. Mr. Hilgert subsequently filed a claim in the bankruptcy proceeding for his corn and received \$4,453.68.

8. The value of Mr. Hilgert's corn on February 3, 1983 was \$26,739.14. When the charges for storage and transfer were deducted from this amount the resulting figure was \$21,208.80. (Ex. 4). When the proceeds recovered in bankruptcy by Mr. Hilgert are deducted from this figure the resulting claim is \$16,755.12.

9. Mr. Hilgert filed a timely claim with the Minnesota Department of Agriculture against the grain buyer's bond held by Mr. Freidrichs for recovery of the amount he lost. On March 13, 1985 the Department issued a written determination that Mr. Hilgert was not entitled to recover against the bond because the grain buyer's bond did not cover the storage of grain. (Ex. 2). On March 26, 1985, Mr. Hilgert then filed a request for hearing in this matter. (Ex. 1). The Department then issued its Notice of and Order for Hearing which set the hearing for June 13 1985. (Ex. 2).

10. The grain buyer's bonds held by Oliver Freidrichs as principal bind Auto-Owners Insurance Co. to the State of Minnesota "for the benefit of all persons selling grain to said Principal, . . . ". The bonds also provide that they are null and void if, among other conditions, "said Principal, being duly licensed as provided herein, shall pay to the owner on demand the purchase price of grain sold to the Principal, . . . ". The bonds also state that they "shall not cover transactions wherein a voluntary extension of credit has been given on the purchase price of grain by the seller to said Principal beyond the demand date." (Ex. A, Ex. B).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. That the Commissioner of Agriculture and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 14.50 and 232.02.

2. That the Department of Agriculture has fulfilled all relevant substantive and procedural requirements of law or rule.

3. That the Department of Agriculture has given proper notice of the hearing; in this matter.

4. That the burden of proof in this contested case proceeding is upon the Claimant.

5. That Claimant, Robert Hilgert, was not paid the amount of \$16,755.12 which was due to him from the sale of his corn.

6. That Oliver Freidrichs was licensed as an itinerant grain buyer by the Department of Agriculture pursuant to Minn. Stat. 232.02, subd. 3 (1981 Supp.) which states that such a license shall be subject to the same laws and rules that govern local grain warehousemen regulated by Chapter 232 insofar as they may apply. That Minn. Stat. 232.02, subd. 3 (1981 Supp.) also provides

that the applicant for a license "shall file with the Department a bond to the state with a corporate surety, . . . conditioned that the applicant will pay upon demand to the owner the purchase price of the grain."

7. Minn. Stat. 232.02, subd. 5 (1980) states, in part, that "The bond shall not cover transactions wherein it appears to the Department that a voluntary extension of credit has been given on the purchase price of such grain by the seller to the licensee beyond the demand date."

8. Minn. Stat. 232.13 (1980) provided that a private local grain warehouseman must file with the Department a bond for the benefit of all persons selling grain to the licensee. The statute further provides that the bonds "shall be conditioned that the applicant will pay to the owner on demand the purchase price of the grain sold to the applicant . . . . The bond shall not cover transactions wherein it appears to the department that a voluntary extension of credit has been given on the purchase price of such grain by the seller to the licensee beyond the demand date."

9. PSC Rule 2436. (now Minn. Rule 1560.7000) provides that, "For the purpose of determining whether a voluntary extension of credit has been made where the statutory limitation relating to bonded purchasers of grain is at issue, the demand date on any transaction which involved the sale of grain shall be no later than the end of the business day next succeeding the day upon which delivery of the grain by the seller to the buyer is completed."

10. That Oliver Freidrichs failed to pay to Robert Hilgert upon his demand on February 3, 1983, the purchase price of his corn.

11. That Robert Hilgert did not give Oliver Freidrichs a voluntary extension of credit on the purchase price of his corn beyond the demand date.

12. That the 1982-1983 Grain Buyer's Bond in the amount of \$50,000 held by Oliver Freidrichs provided coverage for the loss suffered by Robert Hilgert.

13. That the above Conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Agriculture  
issue  
an Order directing Auto-Owners Insurance Co. to pay to the Department of  
Agriculture, for the benefit of Robert Hilgert, the sum of \$16,755.12.

Dated: July \_31 1985.

GEORGE A. BECK  
Administrative Law Judge



NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the administrative law judge by first class mail.

Reported: Taped. Tape Nos. 4147 and 4148.

MEMORANDUM

It must be determined in this case whether the facts surrounding Robert Hilgert's loss of \$16,755.12 related to the sale of his corn permit him to make a recovery against the Grain Buyer's Bond of Oliver Freidrichs for which Auto-Owners Insurance Co. is the surety. An appropriate beginning point is the understanding of the buyer and seller as to the terms of the transaction between them. It is clear that Mr. Hilgert believed that he would retain title to his corn until he advised Mr. Freidrichs to sell it. Mr. Freidrichs did not testify to a contrary understanding. He did state that he thought that Mr. Hilgert would not be able to reclaim his corn from ADM after storage there, but he does not recall communicating this to Hilgert. In their briefs the parties apparently agree that the buyer and seller entered into an oral "open storage" contract under which the title of the grain is retained by the farmer. In re The Matter of Claims Against the Kern Grain Company . . . . . N.W.2d (Minn. App. 1985) (Filed June 18, 1985). The corn was, of course, removed from Mr. Hilgert's physical possession in August of 1981 and transferred to an Archer Daniels Midland (ADM) grain facility in the Twin Cities. The Surety argues that the appropriate characterization of this transaction is that Mr. Freidrichs converted the corn when he delivered it to ADM in August of 1981. The Surety argues that Mr. Freidrichs' delivery of the corn to ADM was under a price later contract which transferred title to ADM and deprived Mr. Hilgert of his control of the grain. There was, however, no contract, oral or written, to which Mr. Hilgert was a party, which transferred title to the grain to anyone other than Mr. Hilgert. Mr. Hilgert's agreement

with Mr. Freidrichs was that the corn would be stored until such time as Mr.

Hilgert told Mr. Freidrichs to sell the corn. Mr. Freidrichs was then to forward the sale price less storage and transfer charges to Mr. Freidrichs.

Mr. Freidrichs was merely carrying out his agreement with Hilgert to store the corn in August of 1981 for later sale.

The crucial language in construing both the bond and the statute is the specific requirement that the bond ensure that the licensee "will pay upon demand to the owner the purchase price of the grain." Both the bond and the statute focus on the point in the transaction where the owner of the grain demands the purchase price from the buyer or licensee. That demand by the grower was not made until February 3, 1983. The main thrust of the Surety's argument however, is that the crucial point in this transaction was the conversion of the grain by Mr. Freidrichs in August of 1981. The Surety therefore argues that no sales transaction occurred at this time and therefore there is no coverage under its bond. The Surety suggests that the only agreement in effect in August of 1981 was an agreement to store the corn. It argues that if anyone stored grain with Mr. Freidrichs they did so at their

own risk since he was not bonded for the storage of grain. The Surety suggests that Mr. Hilgert's remedy may be against the purchaser of the grain, ADM, under *Torgerson v. Quinn-Shepherdson Co.*, 161 Minn. 380 201 N. W. 615 (1925). In that case the Supreme Court suggested that the purchaser of grain from an elevator company which had converted the claimant's grain had to compensate the claimant since the elevator company could not give the defendant good title.

Whatever liability ADM may have in this transaction is not at issue in this case, however. Both the Surety and the Department in its initial denial of the claim focused on the fact that the corn was stored for a period of time. To do so, however, mischaracterizes this transaction and gives no deference to the purpose and specific language of Chapter 232 of Minnesota Statutes. The loss in this case did not arise from a problem related to storage or misbehavior of ADM. The loss occurred because of the failure of the grain buyer to pay Mr. Hilgert for his grain upon demand. The Surety argues that the grain had been converted in August of 1981 and actually sold in the spring of 1982 and that therefore whatever occurred in February of 1983 is irrelevant to the transaction. There was, however, no problem concerning this transaction until Mr. Freidrichs' failure to pay Mr. Hilgert in February of 1983. Mr. Freidrichs testified that it was his intention to pay Mr. Hilgert his money upon demand by selling his own grain to pay Mr. Hilgert when he called. In short, there is really very little difference between the transaction described in the Findings of Fact and a transaction in which Mr. Freidrichs would buy corn from Mr. Hilgert and fail to pay him without any storage being involved at all. The focus of the statute is upon the grain buyer paying the owner the purchase price on demand. The incidental fact that this grain was stored with a third party and then sold from the time it left the producer's possession up until the demand for payment is not crucial in light of the specific language of the statute and the bond.

The statutory purpose is to protect farmers who must entrust their grain to buyers or warehousemen and thereby risk not receiving payment. The Minnesota Supreme Court made clear its view of the bonds written under Chapter 232 in *St. Paul Insurance Companies v. Firemen's Fund American Insurance Companies*, 245 N.W.2d 209, 217 (Minn. 1976) where the Court stated that "this Court has liberally construed these surety bonds in order that they accomplish their statutory purpose of protecting persons who deal with a publicly licensed warehouseman in normal and usual transactions from sustaining loss because of the warehouseman's defaults." In that case the Court permitted the sellers of grain to recover against a public local grain warehouseman's bond even though the statute in effect at the time (Minn. Stat. 232.13 (1967)) stated that the bond to the State of Minnesota "for the benefit of all persons

storing grain in such warehousing." In this case the statutory purpose is to  
"provide coverage or security for the protection of the public required with respect to truck grain buyers . . ." Minn. Stat. 232.02, subd. 3 (1981 Supp.). It is the buyer's default which caused the loss. Mr. Hilgert was not looking to Mr. Freidrichs to store the grain. It was agreed that it would be stored with ADM, a reputable storage facility, and Mr. Hilgert had received documents in August of 1981 showing that this had been accomplished. Mr. Hilgert did rely upon Mr. Freidrichs to sell the corn and it is in that regard that the loss occurred and for which the bond provides coverage.

The Claimant must also establish however that he did not give a voluntary extension of credit to the Licensee beyond the demand date. The only guide to

interpretation of this requirement which was in effect at the time of this transaction is contained in Public Service Commission Rule 243B. -That rule provides that the demand date is the end of the business day following the day upon which delivery of the grain by the seller to the buyer is completed. The Surety argues that the demand date is necessarily in August of 1981 and that therefore the seller gave a voluntary extension of credit to Mr. Freidrichs until February of 1983. The rule obviously contemplates a situation in which no storage is involved but in which grain is picked up and immediately sold. The rule may therefore be inapplicable to this case. Even if the rule was construed to apply to a situation with intervening storage with a third party and a later sale, "delivery" means more than the physical transfer of possession, it also involves the transfer to one person by another of a right or interest in property. *Murphy v. Smith*, 291 Mass. 93, 195 N.E.912. What constitutes delivery depends largely on the intent of the parties. *Miller v. Hospelhorn*, 176 Md. 356, 4 A.2d 728, 733; *Jones v. Young*, Tex.Civ.App. 539 S.W.2d 901, 904. The intent to part with control is essential to delivery. *Michael v. Holland*, 111 Ind.App. 34, 40 N.E.2d 362, 364. In this case the claimant did not intend to transfer title to the grain or to part with control over the corn until February 3, 1983. Delivery was therefore not complete until February 3, 1983.

It is also important, however, to examine the reason for the statutory requirement that the bond shall not cover transactions where a voluntary extension of credit has been given. This represents a legislative intent that where the seller is lax in insisting upon payment and permits the buyer to avoid prompt payment then the Surety should not be obligated to cover the buyer's default. If a seller wants the protection of the bond, it must assist the Surety by insisting upon prompt payment. In this case the Claimant did nothing to permit or encourage the grain buyer not to pay him. The Claimant demanded payment on February 3, 1983. He expected to be paid within approximately 10 days. When this did not happen he promptly called Mr. Freidrichs and demanded payment. At that time Mr. Freidrichs advised Mr. Hilgert that he couldn't pay Mr. Hilgert. There is nothing in the record to indicate that Mr. Hilgert acquiesced to any later payment by Mr. Freidrichs, or voluntarily extended credit in February of 1983.

The final matter which must be considered is which bond covers the loss in this case. The Surety suggests that if any bond applies it must be the 1981-82 bond in the amount of \$10,000 since Freidrichs received the grain in August of 1981 and either converted it to his own use that day or in the spring of 1982 when the grain was sold. The record indicates however that the events which occurred in February of 1983, namely Mr. Hilgert's directions to Mr. Freidrichs to sell the corn and Mr. Freidrichs' preparation of warehouse scale tickets documenting a sale on that date, together with the fact that the seller experienced no loss until that date, all point to the fact that the \$50,000 bond for 1982-83 is the appropriate one for recovery. In the language of the statute, no "demand" had been made before February 3, 1983. No actual loss occurred until Mr. Freidrichs was unable to sell his own grain to cover his obligations to pay Mr. Hilgert or otherwise find funds to pay Hilgert. The breach of the condition of the bond did not occur until payment was demanded and not made. It was that act that the Surety was insuring against for the benefit of sellers of grain. The Minnesota Court of Appeals has held that the bond in effect at the time of a breach by a failure to pay Claimant is an appropriate one for recovery. Kern Grain Company, supra.

G.A.B.

